

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ALISON M. MOYER</b>	)	
Claimant	)	
	)	
VS.	)	Docket No. <b>1,063,360</b>
	)	
<b>SEDGWICK COUNTY</b>	)	
Self-Insured Respondent	)	

**ORDER**

Self-insured respondent requests review of the March 18, 2013, preliminary hearing Order entered by Administrative Law Judge (ALJ) Nelsonna Potts Barnes. David H. Farris, of Wichita, Kansas, appeared for claimant. Robert G. Martin, of Wichita, Kansas, appeared for respondent.

The record on appeal is the same as that considered by the ALJ and consists of the preliminary hearing transcript, with exhibits dated February 7, 2013, and all pleadings contained in the administrative file.

The ALJ found:

Claimant has demonstrated by a preponderance of the evidence that she sustained personal injury by accident arising out of and in the course of her employment. The Court is persuaded by claimant's testimony and Dr. George G. Fluter's medical opinion and finds that the accident was the prevailing factor causing the injury and the need for treatment.

Judge Barnes further found that claimant's accident on October 4, 2012, was a specific traumatic event causing her current condition and need for medical treatment. Dr. Fluter was designated as claimant's treating physician.

**ISSUES**

Respondent requests review of whether claimant's accidental injury arose out of and in the course of employment with respondent. Respondent argues that claimant suffered an injury to her hip while at home.

Claimant argues the ALJ's Order should be affirmed.

The primary issue raised on review is whether claimant suffered a single traumatic event on October 4, 2012 that is the prevailing factor for claimant's need for medical treatment.

#### FINDINGS OF FACT

After reviewing the evidentiary record compiled to date and considering the parties' arguments, the undersigned Board Member finds:

Sedgwick County hired claimant as a paramedic for the Sedgwick County Emergency Medical Service (EMS). Claimant's job duties included responding to emergency calls, driving an ambulance, and providing medical care to individuals. Claimant's job required her to lift heavy equipment such as an airway bag, a cardiac monitor, and a medication box. The position also required claimant to lift individuals, sometimes onto a spine board, out of bed, and onto a cot or a stair chair, used for carrying someone down several flights of stairs.

Claimant testified that she did not have any left hip pain before September 20, 2012. The morning of September 21, 2012, claimant awoke with hip pain, but she went to work. The pain continued, so she sought treatment with her primary care physician on September 25, 2012. Claimant advised Dr. Tristyn Pierce that her hip pain started on September 20 and continued to get worse. The doctor prescribed anti-inflammatory and pain medications. All x-ray and MRI results were negative. Dr. Pierce diagnosed claimant with bursitis. Claimant continued to work her regular job duties from September 20, 2012, through October 3, 2012, without restrictions.

Claimant described the October 4, 2012, accident:

We were called to a residence of a female patient, she was ill. She was a pretty large patient. She had had a history of a stroke so she had, I do not remember if it was left or right sided paralysis. She lived in a very small residence to where we could not get any equipment into her house. Although she did have a wheelchair. So we did place her in a wheelchair. And as we were exiting the residence you come through a kitchen, and as you exit out of the kitchen there is an entry way right there and it was a very small entry way. The captain of the fire department was at the head of the wheelchair. One, the tech from the fire department was on the right side of the wheelchair, I was on the left side of the wheelchair, kind of up in the corner we were having to do a lift and a turn. As I lifted the left side of the wheelchair and turned I immediately got sharp shooting pains down my hip. At that point I immediately stopped and the other fire guy took my place. And I couldn't move any direction, I couldn't reach for anything.

And they helped me get in the ambulance. I was unable to sit or anything, I actually had to stand and hold the rail all the way in. We did have a paramedic student so she took over care at that point in time.<sup>1</sup>

Claimant further testified that she felt something tear and a popping sensation, after which she had excruciating pain. She sought treatment at the emergency room. X-rays were taken and determined to be negative. Claimant filled out some paperwork with the captain and was told to follow-up with her own physician.

The next day respondent referred claimant to Dr. Benjamin Norman. She advised the doctor that she had been having hip pain for approximately two weeks but continued to work full duty without restrictions. She then told Dr. Norman she suffered a sharp pain, which was a new injury. Claimant was not able to work due to being placed on crutches and limited weight bearing by Dr. Norman.

Claimant returned for a follow-up visit with Dr. Norman on October 8, 2012. Restrictions were to be continued until claimant was released by her personal doctor.

On October 12, 2012, Dr. Mohamed Mahomed examined and evaluated claimant at the request of Dr. Pierce. Upon physical examination, Dr. Mahomed found claimant walked with a mild antalgic gait, and range of motion testing of her thoracic and lumbar spine caused pain with lateral flexion to the left. The doctor diagnosed claimant with an abductor muscle pull of the gluteus origin and referred her to physical therapy for stretching and iontophoresis.

Claimant had an appointment with Dr. Pierce on October 16, 2012, and she advised her doctor that she had a work-related accident on October 4, 2012, while lifting a patient. Dr. Pierce gave claimant a Toradol injection into the left hip. As of November 5, 2012, claimant's primary care physician was Dr. Kirk Bliss.

Claimant returned for a follow-up visit with Dr. Mahomed on November 9, 2012. Because she showed no improvement, Dr. Mahomed ordered an MRI with gadolinium. The MRI on November 16, 2012, revealed no labrum tear, no meniscal tear and no abnormality.

On November 26, 2012, claimant was examined by Dr. Bliss due to continued left hip pain. Dr. Bliss recommended an MRI of her lumbar spine, despite the negative arthrogram of her hip.

Dr. George Fluter examined and evaluated claimant on December 13, 2012, at the request of her attorney. The doctor reviewed claimant's medical records, took a history,

---

<sup>1</sup> P.H. Trans. at 14-15.

and performed a physical examination. Dr. Fluter diagnosed claimant with the following: (1) left buttock, hip, thigh and groin pain; (2) probable left sacroiliac joint dysfunction; (3) possible trochanteric bursitis; (4) possible lower extremity radiculitis; and, (5) possible occult pathology affecting the left hip, groin and thigh. Dr. Fluter recommended prescriptions, pain management injections, physical therapy, an MRI and x-rays of the lumbar spine, and placed restrictions on claimant's activities.

As of February 7, 2013, claimant had not returned to work. Claimant testified that she is not able to sit, stand, or walk for any length of time, and pain radiates down her back to her knee.

#### PRINCIPLES OF LAW

K.S.A. 2012 Supp. 44-508(f)(2) provides:

An injury is compensable only if it arises out of and in the course of employment.  
An injury is not compensable because work was a triggering or precipitating factor.  
An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

K.S.A. 2012 Supp. 44-508j(h) provides, in part:

If the employer has knowledge of the injury and refuses or neglects to reasonably provide the services of a health care provider required by this act, the employee may provide the same for such employee, and the employer shall be liable for such expenses subject to the regulations adopted by the director.

The Appeals Board has found accidental injuries resulting in a new physical finding, or a change in the physical structure of the body, are compensable, despite claimant also having an aggravation of a preexisting condition. Several prior decisions tend to show compensability where there is a demonstrated physical injury above and beyond a sole aggravation of a preexisting condition:

- A claimant's accident did not solely cause an aggravation of preexisting carpal tunnel syndrome when the accident also caused a triangular fibrocartilage tear.<sup>2</sup>
- A low back injury resulting in a new disk herniation and new radicular symptoms was not solely an aggravation of a preexisting lumbar condition.<sup>3</sup>

---

<sup>2</sup> *Homan v. U.S.D.* #259, No. 1,058,385, 2012 WL 2061780 (Kan. WCAB May 23, 2012).

<sup>3</sup> *MacIntosh v. Goodyear Tire & Rubber Co.*, No. 1,057,563, 2012 WL 369786 (Kan. WCAB Jan. 31, 2012).

- A claimant's preexisting ACL reconstruction and mild arthritic changes in his knee were not solely aggravated, accelerated or exacerbated by an injury where his repetitive trauma resulted in a new finding, a meniscus tear, that was not preexisting.<sup>4</sup>
- An accident did not solely aggravate, accelerate or exacerbate claimant's preexisting knee condition where the court-ordered doctor opined the accident caused a new tear in claimant's medial meniscus.<sup>5</sup>
- Claimant had a prior partial ligament rupture, but a new accident caused a complete rupture, "a change in the physical structure" of his wrist, which was compensable.<sup>6</sup>
- A motor vehicle accident did not solely aggravate, accelerate or exacerbate claimant's underlying spondylolisthesis when the injury changed the physical structure of claimant's preexisting and stable spondylolisthesis.<sup>7</sup>

In all of these cases, claimant proved his or her accident was the prevailing factor in causing the injury, medical condition and resulting disability.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>8</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2012 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>9</sup>

#### **ANALYSIS**

The ALJ found that the alleged traumatic injury was the prevailing factor in claimant's need for medical treatment based upon the opinion of Dr. Fluter. This Board member disagrees.

---

<sup>4</sup> *Short v. Interstate Brands Corp.*, No. 1,058,446, 2012 WL 3279502 (Kan. WCAB Jul. 13, 2012).

<sup>5</sup> *Folks v. State of Kansas*, No. 1,059,490, 2012 WL 4040471 (Kan. WCAB Aug. 30, 2012).

<sup>6</sup> *Ragan v. Shawnee County*, No. 1,059,278, 2012 WL 2061787 (Kan. WCAB May 30, 2012).

<sup>7</sup> *Gilpin v. Lanier Trucking Co.*, No. 1,059,754, 2012 WL 6101121 (Kan. WCAB Nov. 20, 2012).

<sup>8</sup> K.S.A. 44-534a.

<sup>9</sup> K.S.A. 2012 Supp. 44-555c(k).

Claimant saw Dr. Pierce on September 25, 2012 with complaints of hip pain. Dr. Pierce's notes state:

On Friday when the pain started she cleaned house all day and then was setting some stuff up for her son's birthday party and all of a sudden she started feeling some slight pain in her hip and on Saturday morning she woke up and the pain was much more severe.<sup>10</sup>

Dr. Pierce ordered an x-ray and an MRI of claimant's left hip. The x-ray revealed no evidence of any injury. The October 1, 2012, MRI of the left hip was essentially negative. An enhanced MRI of the left hip was ordered by Dr. Mohamed. The MRI, taken on November 16, 2012, also revealed no abnormalities.

There are two prevailing factor opinions in this case. Dr. Norman wrote that claimant did not suffer a traumatic injury and that the October 4, 2012, incident was not the prevailing factor for her injuries. His basis for this statement was that claimant had been under treatment by her personal physician for the left hip for two weeks prior to the accident and that the claimant already had an appointment to see an orthopedic surgeon on October 27, 2012. In his notes, Dr. Norman wrote that claimant's "pain was just like she had before."<sup>11</sup>

Dr. Wilkinson, who was hired by the respondent and did not examine claimant, performed a records examination and opined that the lifting incident was not the prevailing factor. A review of the medical records leads this Board member to the same conclusion arrived at by Dr. Wilkinson.

The only other causation opinion in the record that supports that the lifting incident led to claimant's need for medical treatment is provided by Dr. Flutter. The ALJ stated that she was persuaded by Dr. Flutter's medical opinion and found that the lifting incident was the prevailing factor for claimant's need for medical treatment, even though Dr. Flutter failed to assess the prevailing factor for claimant's need for medical treatment in his report. Regarding causation, Dr. Flutter wrote:

...there is a causal/contributory relationship between [claimant's] current condition and the repetitive nature of the work-related activities culminating in a specific injury occurring on 10/04/12 while performing activities that are outside those associated with routine activities of daily living.<sup>12</sup>

---

<sup>10</sup> P.H. Trans., Cl. Ex. 1 at 6.

<sup>11</sup> P.H. Trans., Cl. Ex. 3 at 4.

<sup>12</sup> P.H. Trans., Cl. Ex. 9 at 5.

The weight of the evidence presented at the preliminary hearing supports a finding that claimant began experiencing left hip pain when she cleaned her house two weeks prior to the alleged accident and that the alleged accident did result in a change in the physical structure of claimant's left hip.

**CONCLUSION**

Based upon the foregoing, this Board member finds that the claimant's alleged accidental injury, occurring as a single traumatic event on October 4, 2012, is not the prevailing factor for her need for medical treatment for her left hip.

**WHEREFORE**, the undersigned Board Member finds that the March 18, 2013, preliminary hearing Order entered by ALJ Nelsonna Potts Barnes is reversed. Claimant's request for temporary total disability, payment of outstanding medical bills, unauthorized medical treatment, and authorization for medical treatment is denied.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June, 2013.

\_\_\_\_\_  
HONORABLE SETH G. VALERIUS  
BOARD MEMBER

c: David H. Farris, Attorney for Claimant  
dfarris@hzflaw.com; lhathaway@hzflaw.com

Robert G. Martin, Attorney for Self-insured Respondent  
rmartin@martinlawcenter.com

Nelsonna Potts Barnes, ALJ